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In the
Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-1470
No. 90-1513

COLEGIO DE ABOGADOS DE PUERTO RICO,
and
CARMEN ANA CULPEPER, ET AL.,

PETITIONERS,

v.

ROBERT E. SCHNEIDER; HECTOR RAMOS; ORESTE V. RAMOS; JORGE F. ROMANY, AND JORGE SOUSS

RESPONDENTS.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENTS JOINT AND CONSOLIDATED RESPONSE TO PETITIONS FOR WRITS OF CERTIORARI

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SUMMARY OF ARGUMENT

Petitioners ask this Court to review, on jurisdictional and procedural grounds, the decision of the Court of Appeals for the First Circuit, affirming in part the decision of the District Court. They do not question the decision on the merits. All of the issues they raise have raised and argued and resolved more than once in the District Court and in the Court of Appeals and no substantial reasons are alleged for further review of these same issues by this Court.

The issues of want of jurisdiction, *res judicata* and lack of case or controversy were first raised in 1982 and have since then been raised and argued and resolved again and again. This time the petitioners seek to buttress their position by misstating the facts in a vain effort to circumvent the principal barriers to their claims for dismissal on these grounds. This Court should deny any petition based on these grounds and should call to account any party resorting to such tactics.

The other arguments raised by petitioners as grounds for the issuance of the writs lack substance or sufficient importance to merit review by this Court.

PARTIES

The parties in the proceedings now pending before this Court are the Colegio de Abogados de Puerto Rico (the "Colegio"), petitioner in case number 90-1470 and cross-respondent in case number 90-1651; the Secretaries of Justice and of the Treasury of the Commonwealth of Puerto Rico (the "Secretaries"), petitioners in case number 90-1513 and cross-respondents in case number 90-1651; and the Justices (the "Justices") of the Supreme Court of the Commonwealth of Puerto Rico (the "State Court") on the one side and, on the other side, Hector R. Ramos and Robert E. Schneider, Jr. ("Ramos & Schneider"), Oreste V. Ramos ("Oreste"), Jorge F. Romany ("Romany") and Jorge Souss ("Souss"), respondents (the "Respondents") in cases number 90-1470 and 90-1513 and cross-petitioners in case number 90-1651.

STATEMENT OF THE CASE

This controversy commenced on June 9, 1982 with the filing of a civil rights action for declaratory and injunctive relief and damages by Ramos & Schneider in the U.S. District Court for the District of Puerto Rico, the "District Court"), against the Colegio, the Secretaries and the Justices, challenging, among others, on federal constitutional grounds, the compulsory bar membership and funding system imposed by the laws of Puerto Rico and the use of public facilities to sell Colegio stamps without charge to the Colegio. Later in the same month similar actions were filed in the District Court by Oreste, Romany and Souss against the same defendants and all of these action were later consolidated, the "Consolidated Actions").

This controversy has been the subject of three opinions by the U.S. Court of Appeals for the First Circuit (the "Court of Appeals"), and five (not four as stated by the Secretaries at page 3 of their petition) opinions and orders by the District Court. In chronological order the decisions of the Court of Appeals and of the District Court are as follows:

District Court Opinion of September 13, 1982 (the "1982 Jurisdiction Decision") reported at 546 F. Supp. 1251 (1982) denying the motions to dismiss the Consolidated Actions for want of

jurisdiction under the holding in *Rooker v Fidelity Trust Co.*, 263 U.S. 413 (1923) ("*Rooker*"); on *res judicata* grounds; under Article III of the U. S. Constitution, for failing to present an adjudicative controversy, and, as to Colegio stamps, as barred by the *Tax Injunction Act*, 28 U.S.C. Section 1341, and the *Butler Act*, 48 U.S.C. Section 872, filed by the Justices and the Colegio, and the motion to dismiss the claims as to Colegio stamps as barred by the *Tax Injunction Act* and the *Butler Act*, filed by the Secretaries.

Court of Appeals Opinion of December 8, 1982 (the "*1982 Court of Appeals Decision*"), reported at 695 F.2d 17, denying the petitions of the Justices and of the Colegio for writs of mandamus for the dismissal of the Consolidated Actions for want of jurisdiction under *Rooker*; on *res judicata* grounds; under Article III of the U.S. Constitution for failing to present an adjudicative controversy and, with respect to Colegio stamps, as barred by the *Tax Injunction Act* and the *Butler Act* and granting in part the Justices petition for a writ of mandamus for dismissal for failing to state a claim against them except as to Colegio stamps issue as to which the Justices were to continue as nominal parties. The Secretaries did not file any petition for writ of mandamus, were not parties to, and did not participate in *1982 Court of Appeals Decision.*

District Court Opinion and Judgment of June 16, 1983 (the "*1983 District Court Judgment*"), reported at 565 F. Supp. 963 in the Consolidated Actions holding that the laws of Puerto Rico that imposed the compulsory bar membership and funding system and required that public facilities be used to sell Colegio stamps without charge to the Colegio, as interpreted, enforced and applied, violated speech and associational rights guaranteed by the First Amendment to the U.S. Constitution and were contrary to either the Fifth or the Fourteenth Amendments, and granting declaratory and injunctive relief against the Colegio and the Secretaries and damages against the Colegio.

District Court Opinion, Order and Amended Judgment of June 30, 1983 (the "*1983 District Court Order*"), reported at 572 F. Supp. 957 denying the Colegio's motion for stay of the *1983 District Court Judgment* and ordering the amendment of the *1983 District Court Judgment* to show that there was no bar to the voluntary payment of

Colegio membership dues or to the voluntary purchase of Colegio stamps by lawyers.

Court of Appeals Opinion of August 23, 1984 (the "*1984 Court of Appeals Decision*"), reported at 742 F.2d 32, on the appeal filed by the Colegio to the *1983 District Court Judgment*, as amended by the *1983 District Court Order*, holding that the District Court should have abstained from acting while still retaining jurisdiction because the State Court had not yet completed its remedial action having issued a resolution after the *1983 District Court Judgment* stating that the remedy adopted by the Colegio was still before its consideration pending approval, modification or rejection, and vacating the *1983 District Court Judgment* and remanding the case for proceedings not inconsistent with the *1984 Court of Appeals Decision*.

District Court Opinion and Order of August 21, 1987 (the "*1987 Jurisdiction Decision*"), reported at 670 F. Supp. 1098, denying the Colegio's motion to dismiss the Consolidated Actions for want of jurisdiction under *Rooker*; on *res judicata* grounds, and for failing to present a case or controversy.

District Court Opinion and Judgment of March 3, 1988 (the "*1988 District Court Judgment*"), reported at 682 F. Supp. 674, in the Consolidated Actions, holding that the laws of Puerto Rico that imposed the compulsory bar membership and funding system, as interpreted, enforced and applied, violated speech and associational rights guaranteed by the First Amendment to the U.S. Constitution and were contrary to either the Fifth or the Fourteenth Amendments; granting declaratory and injunctive relief against the Colegio and the Secretaries and damages against the Colegio, and denying Respondents challenge to the use of public facilities to sell Colegio stamps without charge for lack of taxpayer standing.

Court of Appeals Opinion of October 24, 1990 (the "*1990 Court of Appeals Decision*"), reported at 917 F.2d. 620, on the appeals filed by the Colegio and the Secretaries from the *1988 District Court Judgment*, affirming that judgment as to damages awarded against the Colegio and the injunctive relief granted but delaying implementation of injunctive relief for six months to give the Colegio an opportunity to modify the system to protect dissenters rights so as to resolve the constitutional problems identified in the opinion,

reversing the *1988 District Court Judgment* as to the use of the proceeds from the sale of Colegio stamps.

In November of 1977, prior to the filing of the Consolidated Action, the Colegio filed an action for disbarment (the "1977 Disbarment Action"), in the State Court against 99 lawyers, including Ramos & Schneider and Romany, for failing to pay their arrears in Colegio compulsory dues. Romany paid his arrears in compulsory dues in 1978 and thereafter was eliminated as a party in the 1977 Disbarment Action. Respondents Souss and Oreste were never included as parties in the 1977 Disbarment Action. Contrary to the assertions of the Colegio, at pages 2 and 10 of their petition, and of the Secretaries, at page 4 of their petition, the 1977 Disbarment Action never did include all five of the Respondents herein.

Ramos & Schneider, the only Respondents who were parties in the 1977 Disbarment Action, challenged, under the laws and Constitution of Puerto Rico, those laws of Puerto Rico that compelled all lawyers, including acting judges in the local courts and in the Federal courts, as condition to the right to practice law in Puerto Rico, to be members of and fund the Colegio by the compulsory payment of dues and purchase of Colegio stamps and the use by the Colegio of the funds they were compelled to contribute to it for ideological and political ends. On April 5, 1982, more than five years later, after many incidents involving contradictory State Court orders and frustrated attempts at discovery, the State Court finally issued its Opinion and Judgment (the "*1982 State Court Decision*"), reported at 112 D.P.R. 540, upholding the validity and constitutionality, under the laws and constitution of Puerto Rico, of the Colegio compulsory membership and funding system; holding that the Colegio had the right and obligation to engage in political and ideological activity "for the social advancement of the community," because, according to the majority opinion of Chief Justice Trias Monge, of its very special mission in converting Puerto Rico's traditionally monolithic milieu to a pluralistic society, recognizing, however, a limited but not retroactive right of lawyers to object to the use for ideological ends unrelated to the Colegio statutory purposes, of the compulsory dues paid by lawyers to the Colegio; directing the Colegio to adopt a method, following the guidelines set forth in the *1982 State Court Decision* and "heeding the principles laid down in *Street, Allen and*

Abood," although these made "no definitive pronouncement on this prickly problem," for such objecting lawyers to seek partial refunds of future payments of compulsory dues of the portion used by the Colegio for ideological ends they objected to, and ordering all parties in the 1977 Disbarment Action, including Ramos & Schneider, but none of the other three Respondents in these cases, to pay their arrears in Colegio compulsory dues or be disbarred. Associate Justice Negron Garcia, who, on June 16, 1982, disqualified himself from any future participation in the case because he was the brother of attorney Arturo Negron Garcia, one of the lawyers who represented the Colegio in the 1977 Disbarment Action and a past and future president of the Colegio and member of its Council of Presidents, wrote a concurring opinion on April 5, 1982 in the 1977 Disbarment Action, holding that the elimination of the compulsory Colegio for its past or present errors was not justified in a "pluralistic society" such as existed in Puerto Rico.

The Colegio in May of 1982 filed a motion in the State Court naming 17 lawyers who were parties to the 1977 Disbarment Action, including Ramos & Schneider but none of the other three Respondents herein, who were still in arrears in the payment of Colegio compulsory dues and asking the State Court to proceed against these 17 in accordance with the *1982 State Court Decision*. By Order of June 3, 1982, the State Court, noting that the *1982 State Court Decision* was final and firm, disbarred Ramos & Schneider for non-payment of their arrears in Colegio compulsory dues but took no action whatsoever against the other 15 lawyers named by Colegio in its May, 1982 motion as parties in the 1977 Disbarment Action and subject to sanction under the *1982 State Court Decision* for non-payment of their Colegio compulsory dues.

In 1985, after the *1984 Court of Appeals Decision* vacating the *1983 District Court Judgment* and ordering the District Court to stay its hand "while retaining jurisdiction, to allow the State Court a reasonable time within which to review the Colegio's remedy, and to accept, reject or modify it, the State Court, at the request of the Colegio, held extensive hearings (the "1985 State Court Hearings"), before a special master, a former Associate Justice of the State Court and dues paying, good-standing member of the Colegio, to hear testimony of the Colegio. These hearings were scheduled by the State

Court under the same case number as the 1977 Disbarment Action and Ramos & Schneider were duly notified of the 1985 State Court Hearings as if they were parties to the proceedings, although at all times they informed the State Court and the Special Master that they appeared and took part in the 1985 State Court Hearings not as parties nor in an adversary capacity because the adjudicative action against them in the 1977 Disbarment Action ended with the *1982 State Court Decision* and their subsequent disbarment in execution and enforcement of said *1982 State Court Decision*, but as observers in order to assist in the drafting of an acceptable remedy.

The attorney for Respondents Oreste, Romany and Souss, who were never parties in the 1977 Disbarment Action, was notified of the 1985 State Hearings and appeared at the first hearing, a preliminary hearing held before the special master in January of 1985 as part of the 1985 State Court Hearings. At this preliminary hearing Respondents Oreste, Romany and Souss announced that they were not and had never been parties to the 1977 Disbarment Action and that they had appeared as a matter of courtesy on being notified of the hearing; the Colegio announced that those who were not parties, who had no interest and who came to the hearing as a matter of courtesy should be free; Respondents Oreste, Romany and Souss then asked the special master to be relieved of further participation in the proceedings, and the special master then relieved and excused these three Respondents from further participation in the 1985 State Court Hearings. This is incorrectly characterized by the Colegio, at page 4 of their petition, and by the Secretaries, at pages 6 and 17 of their petition, as the refusal of Respondents Oreste, Romany and Souss to participate in the 1985 State Court Hearing, although the Secretaries do concede, at footnote 6 on page 6 of their petition, that, in its June 26, 1986 ruling adopting the new Colegio remedy (the "*1986 Remedy*"), reported at 117 D.P.R. 504, the State Court stated that Respondents Oreste, Romany and Souss requested to be relieved from further participation in the 1985 State Court Hearings and that this request was granted, and the Colegio, at page 16 of its petition, and the Secretaries, at page 17 of their petition, incorrectly conclude that, because of such refusal, Respondents Oreste, Romany and Souss "simply waived their rights and implicitly agreed to" the *1986 Remedy*.

REASONS FOR DENYING THE WRIT

THE ROOKER-FELDMAN AND THE RES JUDICATA ISSUES WERE CORRECTLY DECIDED BY THE DISTRICT COURT AND BY THE COURT OF APPEALS.

It is true that throughout the long history of this case the Colegio has argued many times that the holding in *Rooker* and its progeny bars the exercise of jurisdiction by District Court in the Consolidated Actions and that these cases should be dismissed on *res judicata* grounds, but this has not been its "unflagging position."

Unfortunately, the same cannot be said for the Secretaries and their assertion on page 10 of their petition that, "throughout the long history of this case it has been (their) unflagging position" is just not true. For the Secretaries it is only the second time that they have raised these issues, the first time being in their appeal of the *1988 District Court Judgment* and now in their petition before this Court.

In 1982 the Justices and the Colegio moved in the District Court for the dismissal of the Consolidated Actions for lack of jurisdiction based on the *Rooker* doctrine and on *res judicata* grounds. The District Court in the 1982 Jurisdiction Decision denied dismissal on these grounds. The Secretaries did file a motion to dismiss in 1982 "but limited to the issues raised by the *Tax Injunction Act* and the *Butler Act*," none of which issues has been raised here, which motion was also denied in the 1982 Jurisdiction Decision.

The Justices again moved for dismissal for lack of jurisdiction under *Rooker* and on *res judicata* grounds in their 1982 petition for writ of mandamus in the Court of Appeals, which was denied in the *1982 Court of Appeals Decision*. The Colegio also filed a petition for writ of mandamus with the Court of Appeals in 1982 but on the same grounds, which petition was denied in the *1982 Court of Appeals Decision*

The Secretaries did not participate in the 1982 mandamus proceedings before the Court of Appeals.

The same issues were raised again by the Colegio in the District Court at the conclusion of the 1983 trial and before judgment and were again rejected by the District Court. No such issues were raised by the Secretaries at that time.

The Colegio did not argue for dismissal on the grounds of *Rooker* and on *res judicata* grounds in their appeal from the *1983 District Court Judgment*, and in the *1984 Court of Appeals Decision* it is noted at footnote 6 on page 37 that the Colegio had not challenged the 1982 Jurisdiction Decision denying dismissal on these grounds.

The Secretaries did not take any appeal from the *1983 District Court Judgment* and in their memorandum of law after the 1983 District Court trial they expressly stated that, "[i]nsofar, then, as plaintiff's claim in [those cases] may involve a general challenge to the constitutionality of Law 43 of May 14th, 1932, 4 L.P.R.A. 771 et seq., claiming that it is an encroachment of individual rights under the First and Fourteenth Amendments to the United States Constitution; and a general challenge to the constitutionality of Law 99 of June 7th, 1956, 4 L.P.R.A. 851, claiming that they are in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution, said challenges fall under the jurisdiction of this Honorable Court."

In the 1987 proceedings before the District Court the Colegio again sought dismissal on the basis of *Rooker* and on *res judicata* grounds, which dismissal was again denied in the *1987 Jurisdiction Decision*. The Secretaries did not file any motion for dismissal on these grounds with the District Court.

In their appeals from the *1988 District Court Judgment* both the Colegio and the Secretaries again raised the issues of lack of jurisdiction under *Rooker* and of *res judicata*, both of which had been resolved by the District Court in its 1982 Jurisdiction Decision and again in its *1987 Jurisdiction Decision*. And now, the Colegio and the Secretaries again raise the same issues on their petitions for writs of certiorari.

Both the Colegio and the Secretaries attempt to avoid the major stumbling block to their jurisdiction and *res judicata* claims by incorrectly stating in their respective statements of the case (the Colegio at page at page 2 and again at the bottom of page 10; the Secretaries at page 4) that the action filed in the State Court by the Colegio was against the five Respondents herein when in fact only two of the five Respondents were parties in the State Court action. The Colegio and the Secretaries not only misstate the facts when they claim that all five Respondents were parties in the 1977 Disbarment

Action filed by the Colegio with the State Court but they also misstate the facts when they assert (the Colegio at page 4 and the Secretaries at page 6 and 15) that Respondents Oreste Ramos, Jorge Souss and Jorge Romany refused to participate in the 1985 State Court Hearings. As the Court of Appeals correctly noted in the *1990 Court of Appeals Decision* at 628-629 "a contrary conclusion on the (jurisdiction issue) would have little impact on this litigation because only two of the plaintiffs were parties in the state court; thus, even if jurisdiction were improper as to them, the case would continue on behalf of the remaining plaintiffs."

The Colegio and the Secretaries in their efforts to characterize the 1985 State Court Hearings and the *1986 Remedy* as adjudicative by asserting that Ramos & Schneider participated in the 1985 State Court Hearings in an adversary capacity, raising "objections to the Colegio's proposed findings of fact and conclusions of law" and presenting "their own counterproposal of findings of fact and conclusions of law." At the preliminary hearing held in January of 1985 in the 1985 State Court Hearings, Attorney Negron Garcia, on behalf of the Colegio stated that the hearing was to give Respondents "participation in the formulation of a remedy which, it appears to me, is all that is in issue here today. And the hearing before Your Honor is basically the presentation of the evidence that may be necessary to design a remedy. That is, the Court at this time is not adjudicating if membership is compulsory or not compulsory, or if it should or should not be, or if the 'Colegio de Abogados' is going to take part in ideological activities or not. The Supreme Court already decided. That, this has been adjudicated by the Supreme Court of Puerto Rico. What appears to me to be the issue is to design a remedy...."

Ramos & Schneider at all stages of the 1985 State Court Hearings informed the State Court and the Special Master that they did not appear as parties or in an adversary capacity because the adjudicative proceedings against them initiated with the 1977 Disbarment Action had terminated with the *1982 State Court Decision*. Ramos & Schneider submitted their comments and corrections to the proposed findings of fact and remedy submitted by the Colegio in the 1985 Hearings. They submitted no conclusions of law because the State Court had clearly stated that the function of the Special Master was to receive the evidence and submit a report of his findings of fact.

THE DECISION OF THE COURT OF APPEALS DOES NOT VIOLATE ANY OF THE PRINCIPLES OF COMITY OR OF FEDERALISM

Petitioners have presented no compelling argument to merit the issuance of the requested writs on the grounds of alleged violations of the principles of Comity and Federalism.

The Secretaries, in their petition on this point, cite the words of Justice O'Connor to the effect that there "is no reason to assume that state court judges cannot and will not provide a 'hospitable forum' in litigating federal constitutional questions." The issue of a 'hospitable forum' has never been raised in this case and yet it is interesting to note that all of the Justices of the State Court who acted in this case, were at all times, dues paying, good-standing members of the Colegio and one Justice, at the time that he issued a concurring opinion in the State Court, was the brother of one of the lawyers representing the Colegio before the State Court; that the Special Masters named by the State Court were all dues paying, good-standing members of the Colegio; that the State Court imposed the sanction of disbarment under the *1982 State Court Decision* on only two of the 17 lawyers who were in arrears in the payment of Colegio compulsory dues and were parties to the 1977 Disbarment Action, on the only two who challenged the compulsory membership and funding system, and that the two former State Court Justices who were named by the State Court to the Review Board of Colegio ideological activities and were objected to by Respondents because they had participated as Justices in the *1982 State Court Decision* subsequently resigned from the Review Board stating that they should not act on the Review Board because they had participated as Justices in the *1982 State Court Decision.*

NO OTHER ISSUES HAVE BEEN RAISED BY PETITIONERS THAT JUSTIFY THE ISSUANCE OF THE WRITS

The Petitioners have raised other issues in their petitions but none with any substance or sufficiently important to merit review by this Court. They are treated as side or secondary issues by Petitioners and should be treated in the same way by this Court.

CONCLUSION

None of the issues raised by Petitioners merit review by this court. The petitions of the Colegio and of the Secretaries for writs of certiorari should be denied.

DATED: May 20, 1991

Respectfully submitted,

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